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Wolf Welding & Ceramic Lining, Inc. and United Mine Workers of America, District 31, AFL– CIO. Case 6–CA–28884

August 25, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge and amended charge filed by the Union on March 24, and June 16, 1997, the General Counsel of the National Labor Relations Board issued a complaint on June 23, 1997, against Wolf Welding & Ceramic Lining, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On July 23, 1997, the General Counsel filed a Motion for Default Summary Judgment with the Board. On July 25, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 9, 1997, notified the Respondent that unless an answer were received by the third day following the Respondent's receipt of the letter, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Thomas, West Virginia, has been engaged in the repair, maintenance

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and fabrication of coal mine equipment and facilities. During the 12-month period ending February 28, 1997, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 for other enterprises within the State of West Virginia, including Consolidation Coal Company, in which enterprises are themselves directly engaged in interstate commerce within the meaning of Section 2(2), (6) and (7) of the Act. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times the Union has been the exclusive collective-bargaining representative of certain employees of the Respondent (the unit) and has been recognized as such by the Respondent. Such recognition is embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms from April 4, 1995, to February 11, 1998 (the 1995–1998 agreement). The unit, as set forth in the 1995–1998 agreement, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. At all material times, based on Section 9(b) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about January 29, 1997, and as clarified on April 22, 1997, the Union, by letters, has requested the Respondent to furnish the Union with a copy of all panel forms for all laid-off unit employees and a list of all work performed by the Respondent at UMWArepresented sites during the past 12-month period. Since about April 28, 1997, the Union, by letter, has requested that the Respondent furnish the Union with a copy of unit employee Ray Wells' payroll checks for the past 3 years, a copy of all panel forms for the last 3 years, and a copy of all medical bills paid by the Respondent for the last 3 years. This information is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about January 29, 1997, the Respondent, by failing and refusing to respond to the Union's requests for information described above, has failed and refused to furnish the Union with the requested information.

Since about January 31, February 19 and 27, and April 22, 1997, the Union has requested that the Respondent meet for the purposes of adjusting grievances pursuant to the grievance procedure provided for in article 21 of the 1995–1998 agreement. Since about January 31, 1997, the Respondent has failed and refused to respond to the requests to meet with the Union for the purposes of adjusting the grievances described

above, and has thereby failed and refused to bargain in good faith with the Union.

Since about December 16, 1996, the Respondent failed to continue in effect all the terms and conditions of the 1995-1998 agreement by failing and refusing to remit union dues to the Union as provided for in article 14 of the 1995-1998 agreement. The Respondent engaged in this conduct without the Union's consent, and the terms and conditions of employment are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed, since about January 29, 1997, to provide the Union the information it requested since about January 29 and April 28, 1997, and as clarified April 22, 1997, that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union the information requested.

In addition, having found that the Respondent has failed and refused, since about January 31, 1997, to meet with the Union to adjust grievances pursuant to the grievance procedure provided for in article 21 of the 1995–1998 agreement, we shall order the Respondent to do so.

Finally, having found that the Respondent failed to continue in effect all the terms and conditions of the 1995–1998 agreement by failing and refusing, since about December 16, 1996, to remit union dues to the Union as provided for in the 1995–1998 agreement, we shall order the Respondent to remit such dues to the Union, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Wolf Welding & Ceramic Lining, Inc., Thomas, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Failing or refusing to provide the United Mine Workers of America, District 31, AFL—CIO, with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit set forth in the 1995–1998 agreement.
- (b) Failing or refusing to respond to the Union's requests to meet with the Union for the purposes of adjusting the grievances filed pursuant to the 1995–1998 agreement.
- (c) Failing or refusing to remit union dues to the Union as provided for in article 14 of the 1995–1998 agreement.
- (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Provide the Union with the information it requested since about January 29 and April 28, 1997.
- (b) Meet with the Union to adjust grievances pursuant to the grievance procedure provided for in article 21 of the 1995–1998 agreement, as requested since about January 31, 1997.
- (c) Remit to the Union, with interest, the dues that it was required to remit, in accord with the terms of the 1995-1998 agreement, since about December 16, 1996.
- (d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.
- (e) Within 14 days after service by the Region, post at its facility in Thomas, West Virginia, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

employees and former employees employed by the Respondent at any time since March 24, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 25, 1997

William B. Gould IV,	Chairman
Sarah M. Fox,	Member
John E. Higgins, Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

An Agency of the United States Government

WE WILL NOT fail or refuse to provide the United Mine Workers of America, District 31, AFL—CIO, with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of our employees in the unit set forth in our collective-bargaining agreement with the Union, effective by its terms from April 4, 1995, to February 11, 1998.

WE WILL NOT fail or refuse to respond to the Union's requests to meet for the purposes of adjusting the grievances filed pursuant to the 1995–1998 agreement.

WE WILL NOT fail or refuse to remit union dues to the Union as provided for in article 14 of the 1995–1998 agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide the Union with the information it requested since about January 29 and April 28, 1997, and as clarified on April 22, 1997.

WE WILL meet with the Union to adjust grievances pursuant to the grievance procedure provided for in article 21 of the 1995–1998 agreement, as requested since about January 31, 1997.

WE WILL remit to the Union, with interest, the dues that we were required to remit, in accord with the terms of the 1995–1998 agreement, since about December 16, 1996.

WOLF WELDING & CERAMIC LINING, INC.